

Date of decision: March 11,1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or an..

thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.R.H.Mehta, L.A. for the appellant
Mr.D.O.Shah L.A. for respondent no.1
Mr.B.K.Damani, L.A. for respondent no.2
Respondent no.3 not served

Coram: N.J.Pandya & A.R.Dave,JJ.
March 11,1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

The appellants in this appeal have come with a limited request that the incident having taken place prior to the amendment brought about in the provisions of the Motor Vehicles Act 1938 with effect from 1-10-1982, the liability of the Company could not exceed

Rs.50,000/-.

2. The Company therefore, clearly admits the contract of insurance. The incident is dated 12-5-1982. After considering the matter, the learned Judge of Motor Accident Claims Tribunal (Main) Bhavnagar, while dealing with Motor Accident Claim Petition NO.191 of 1982 has held the appellant-Insurance Co. liable for the entire amount along with owner and driver of the vehicle involved. It seems that the question of limited liability was never raised before the Tribunal. However, this being a legal question, the Company cannot be held responsible for not raising that issue before the Tribunal. The appeal, therefore, will have to be allowed.

3. The appeal is, therefore, partly allowed. The liability of the Insurance Company is restricted to Rs.50,000/- with proportionate cost and interest as ordered by the Tribunal. Rest of the order of the Tribunal will remain as it is. Interim relief is vacated. No order as to costs.
